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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

1ST MEDIA, LLC, Plaintiff, vs. NAPSTER, INC., REALNETWORKS, INC., KSOLO, INC., and SLEP-TON ENTERTAINMENT CORPORATION d/b/a SOUND CHOICE ACCOMPANIMENT TRACKS, Defendants. AND RELATED COUNTERCLAIMS	Case No. 2:07 - CV-00056-LDG-GWF **ANSWER AND COUNTERCLAIM OF DEFENDANT REALNETWORKS, INC.** **JURY DEMAND**

Defendant RealNetworks, Inc. ("RealNetworks") hereby answers the complaint of Plaintiff 1st Media, LLC as follows:

1. RealNetworks admits that the complaint purports to allege causes of action under the patent laws, and thus this Court has jurisdiction pursuant to 28 U.S.C. § 1338(a).

Dockets.Justia.com

2. RealNetworks admits that it transacts business in this District and thus venue is proper in this District. RealNetworks denies the remaining allegations of Paragraph 2.

3. RealNetworks admits that Exhibit A appears to be a copy of U.S. Patent No. 5,464,946 (the "'946 Patent"), issued on November 7, 1995, listing Scott Lewis as the inventor. RealNetworks lacks sufficient information on which to form a belief as to the truth of the remaining allegations of Paragraph 3, and on that basis denies them.

4. RealNetworks lacks sufficient information on which to form a belief as to the truth of the allegations of Paragraph 4, and on that basis denies them.

5. RealNetworks admits the allegations of the first and second sentences of Paragraph 5. RealNetworks denies the remaining allegations of Paragraph 5.

6. RealNetworks lacks sufficient information on which to form a belief as to the truth of the allegations of Paragraph 6, and on that basis denies them.

7. RealNetworks lacks sufficient information on which to form a belief as to the truth of the allegations of Paragraph 7, and on that basis denies them.

8. RealNetworks lacks sufficient information on which to form a belief as to the truth of the allegations of Paragraph 8, and on that basis denies them.

9. RealNetworks lacks sufficient information on which to form a belief as to the truth of the allegations of Paragraph 9, and on that basis denies them.

10. RealNetworks lacks sufficient information on which to form a belief as to the truth of the allegations of Paragraph 10, and on that basis denies them.

11. RealNetworks denies that it has infringed the '946 Patent directly or indirectly. RealNetworks lacks sufficient information on which to form a belief as to the truth of the remainder of the allegations of Paragraph 11, and on that basis denies them.

12. RealNetworks admits that it maintains websites accessible over the internet through which it provides certain products and services. RealNetworks denies the remaining allegations of Paragraph 12 directed towards it. RealNetworks lacks sufficient information on which to form a belief as to the truth of the allegations of Paragraph 12 directed towards Napster, and on that basis denies them.

13. RealNetworks admits that Sound Choice audio files are available through its online products. RealNetworks denies the remaining allegations of Paragraph 13 directed towards it. RealNetworks lacks sufficient information on which to form a belief as to the truth of the allegations of Paragraph 13 directed towards the other defendants, and on that basis denies them.

14. RealNetworks denies the allegations of Paragraph 14 directed towards it. RealNetworks lacks sufficient information on which to form a belief as to the truth of the allegations of Paragraph 14 directed towards the other defendants, and on that basis denies them.

15. RealNetworks denies the allegations of Paragraph 15 directed towards it. RealNetworks lacks sufficient information on which to form a belief as to the truth of the allegations of Paragraph 15 directed towards the other defendants, and on that basis denies them.

16. RealNetworks requests a trial by jury.

AFFIRMATIVE DEFENSES

For its affirmative defenses, RealNetworks alleges the following:

First Affirmative Defense

The ’946 patent is invalid for failure to comply with the requirements of 35 U.S.C. §§ 101, 102, 103, 112, 115, 116 and/or other statutory requirements.

Second Affirmative Defense

1st Media’s claims are barred by the doctrine of laches.

Third Affirmative Defense

1st Media’s claims are barred by the doctrine of estoppel.

Fourth Affirmative Defense

1st Media’s claims are barred by the doctrine of unclean hands.

Fifth Affirmative Defense

1st Media’s claims for damages and injunction are barred in whole or in part by operation of 35 U.S.C. §§ 286, 287 and/or other statutory provisions.

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Sixth Affirmative Defense

RealNetworks has not and does not willfully or otherwise infringe, contribute to infringement of, or actively induce others to infringe, either literally or by application of the doctrine of equivalents, any claim of the '946 patent.

COUNTERCLAIM

Counterplaintiff RealNetworks, Inc. ("RealNetworks"), for its counterclaim against Counterdefendant 1st Media, LLC. ("1st Media"), alleges as follows:

PARTIES

1. RealNetworks is a corporation organized under the laws of Washington, having its principal place of business at 2601 Elliott Avenue, Suite 1000, Seattle, Washington.

2. Upon information and belief, 1st Media is a limited liability company organized under the laws of Nevada, with its principal place of business in this District.

JURISDICTION AND VENUE

3. These counterclaims are based upon the Patent Laws of the United States, Title 35 of the United States Code, §1 *et seq*. The Court has jurisdiction over the counterclaims pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391, because Counterdefendant 1st Media resides in this District.

CASE AND CONTROVERSY

5. U.S. Patent No. 5,464,946 ("the '946 Patent"), entitled "System and Apparatus for Interactive Multimedia Entertainment" issued on November 7, 1995. 1st Media purports to be the owner of the '946 Patent.

6. 1st Media has sued RealNetworks in the present action, alleging infringement of the '946 Patent.

7. There is an actual justifiable case or controversy between RealNetworks and 1st Media arising under the Patent Laws, 35 U.S.C. § 1 *et seq*. This case or controversy arises by virtue of 1st Media's filing of this suit, which purports to allege that RealNetworks infringes the '946 Patent and RealNetworks's Answer thereto, which asserts the invalidity and noninfringement of the '946 Patent.

COUNT 1

DECLARATORY JUDGMENT OF INVALIDITY

8. RealNetworks incorporates by reference Paragraphs 1 - 7 into this count as though fully set forth herein.

9. On information and belief, the ’946 Patent is invalid for failure to comply with the requirements of 35 U.S.C. §§ 101, 102, 103, 112, 115, 116 and/or other statutory requirements, and on that basis, RealNetworks requests declaratory judgment that the ’946 Patent is invalid.

COUNT 2

DECLARATORY JUDGMENT OF NONINFRINGEMENT

10. RealNetworks incorporates by reference Paragraphs 1 - 9 into this count as though fully set forth herein.

11. No current or former RealNetworks product infringes any valid claim of the ’946 Patent, and on that basis, RealNetworks requests declaratory judgment that RealNetworks has not infringed the ’946 Patent.

RESERVATION OF COUNTERCLAIMS

12. RealNetworks reserves the right to assert any other counterclaims that discovery may reveal, including, but not limited to, claims arising out of false or misleading statements to the United States Patent and Trademark Office.

PRAYER FOR RELIEF

WHEREFORE, RealNetworks respectfully prays for the following relief:

A. that this Court deny and all relief requested by Plaintiff in its Complaint and any relief whatsoever, and that the Complaint be dismissed with prejudice;

B. that this Court declare the ’946 Patent invalid;

C. that this Court declare that RealNetworks has not infringed any valid claim of the ’946 Patent;

D. that this Court declare the case to be exceptional pursuant to 35 U.S.C. § 285 and that costs of this action and attorneys’ fees be awarded to RealNetworks;

E. that this Court grant such other and further relief to RealNetworks as this Court may deem just and equitable and as the Court deems appropriate.

DEMAND FOR JURY TRIAL

Defendant RealNetworks hereby demands trial by jury in this action.

Dated: April 16, 2007

Respectfully submitted,

By: /s/ Michael D. Rounds

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Attorneys for Defendant
REALNETWORKS, INC.

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I certify that I am an employee of the law offices of Watson Rounds, and that on this date, a true and correct copy of the foregoing document was served upon the following individuals via electronic mail through the United States District Court's CM/ECF system:

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Dated: April 16, 2007

By: ________________________________